

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Hark C. Chan	Examiner:	Nano, Sargon N
Serial No.:	<b>09/836,397</b>	Group Art Unit:	2157
Filed:	4/17/2001	Docket No.:	LOCREM-01
Title:	<b>A DATA DELIVERY SYSTEM USING LOCAL AND REMOTE COMMUNICATIONS</b>		

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**REPLY BRIEF**

This is a reply to the Examiner's Answer dated November 24, 2010.

It appears that the "Claim Rejections - 35 USC § 103" section of the Examiner's Answer (pages 3-8) are substantially the same as that in the Office Action dated April 28, 2010. Thus appellant will focus attention and respond to the "Response to Arguments" section of the Examiner's Answer (pages 8-11). Appellant will first discuss Examiner's arguments related to the teaching of the references and then whether Chen is a proper reference.

- (1) **Page 9 of Examiner's Answer under Heading: "As per appellant, there is no teaching or suggestion in the cited references that non-deterministic digital content is deliver from one device to another device"**

The Examiner wrote:

"In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., digital content delivered from one device to another device) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims" (Examiner's Answer, page 9, lines 10-13).

Claim 2 recites that "at least one member of said apparatus and said at least one portable unit generates non-deterministic digital contents at multiple times without user action at these times, said one member uses its local interface to **deliver** at least one of said **digital contents** to

another member of said apparatus and said at least one portable unit.” (Emphasis added). Claim 12 recites similar limitation. Thus, in contrast to the Examiner’s contention, the claims clearly recite delivery of digital content from one device to another.

On the other hand, Weiss discloses that: “The non-predicable code 40 thus generated may be **visually observed** by the user for eventual **input** into an access control means 50.” (col. 3, lines 13-15; emphasis added). Similarly, Weiss also teaches that: “A security guard thus in possession of such an access control mechanism would typically **read** the fixed 10 and non-predictable code 40 appearing on the card 20, FIG. 2, of an authorized **person** and **input** such codes 10, 40 into the portable access control mechanism 50 to determine whether the bearer of the card is truly in possession of a first computer 20 which was issued by the authority establishing the secret pre-determined algorithm.” (col. 8, lines 25-34; emphasis added). There is no teaching or suggestion that “said one member uses its local interface to deliver at least one of said digital contents to another member of said apparatus and said at least one portable unit,” as recited in claim 2.

Even the Examiner agreed that Weiss requires user action instead of delivery using a “local interface” as recited in claim 2. The Examiner stated in the Answer that: “Despite the fact that the claims do not recite any devices, Weiss discloses that an authorized user of a computer is typically **required to personally sense** that the first non-predictable code is completed, and then communicate the first non predictable code to the means for comparing (see col. 6, lines 19-37)” (Examiner’s Answer, page 9, lines 14-18; emphasis added). Personal sensing and input by a user means that the devices do not communicate with each other. This is completely different from delivery using a “local interface”, which is recited as designed for “communicating with said apparatus when said at least one portable unit is located within said domain.” An example of “local interface” is recited in claims 5 and 14 and more examples are discussed on page 4, lines 13-15 of the Specification. Consequently, appellant contends that at least one limitation of claim 2 is not taught or suggested by the prior art.

- (2) **Page 10 of Examiner’s Answer under Heading: “As per appellant, there is no teaching or suggestion in the cited references that non-deterministic digital content is used as identification in communication”**

On page 10, lines 7-12 of Examiner's Answer, the Examiner relied on a device called FOB that is implemented in the USPTO. Appellant does not know how this device works, and the Examiner did not provide any document related to this device. Further, the Examiner did not show that this device was invented before the priority date of appellant's patent application. Thus appellant contends that the internal USPTO implemented FOB device should not be relied upon to reject the claims.

Claim 2 recites that "said digital contents being used by said apparatus and said at least one portable unit as identification in communication via said wide area network." The Examiner argued that "Weiss discloses that a non-predictable code, which is generated multiple times without any action by the user, is used for verification and identification in order to gain access to a second system." (Examiner's Answer, page 10, lines 4-6). Note that Weiss teaches that a user reads a number and inputs the number into a device. There is no teaching or suggestion for any communication via a wide area network. Thus the teaching of Weiss is different from "said digital contents being used by said apparatus and said at least one portable unit as identification in communication via said wide area network," as recited in claim 2.

**(3) Page 10 of Examiner's Answer under Heading: "As per appellant, the applied arts do not teach the use of algorithm as a digital content"**

Claim 8 recites: "The system of claim 2 wherein said at least one digital content comprises an algorithm." Claim 17 recites: "The method of claim 12 wherein the at least one digital content comprises an algorithm." Note that the words "digital content" refers to "non-deterministic digital content" recited in claims 2 and 12, from which claims 8 and 17, respectively, depend. The Examiner argued: "Weiss's abstract discloses an algorithm as digital content because Weiss discloses a processor having an algorithmic preprogram therein and means for storing the static variable which makes the algorithm a digital content, the content cannot be program unless it is digital." (Examiner's Answer, page 10, last paragraph). As explained on pages 7 and 8 of the Appeal Brief, the abstract of Weiss does not teach non-deterministic algorithm. It appears that the Examiner completely ignored the "non-deterministic"

limitation in the claims and rejected the claims merely based on the argument that an algorithm is digital in nature. Thus appellant contends that this ground of rejection should be reverse.

**(4) Page 8 of Examiner's Answer under Heading: "As per appellant, the examiner has not shown that Chen is a proper prior art"**

In the Office Action dated April 28, 2010, the Examiner relied on Chen's published application. Appellant pointed out in the Appeal Brief that the published application is not prior art. The Examiner appeared to agree and in the Examiner's Answer relied on Chen's provisional patent application 60/179,042 instead of the Chen published application (note that the Chen publication has substantially more disclosure than the provisional application). According to the Examiner, "Chen was relied upon to disclose a local and wide area interfaces" (Examiner's Answer, page 8, lines 15-16). However, the Examiner did not point to Weiss, Chen, or common knowledge in the art, as to why a person skilled in the art would incur extra costs to include both local and wide area interfaces in Weiss. Even if Weiss has been modified to include both types of interfaces, the Examiner did not provide any suggestion in the cited references, or common knowledge in the art, as to why a person skilled in the art would modify Weiss in the specific way stated in the claim: i.e., using a local interface to deliver digital content and using the digital content as identification in a wide area network.

**Conclusion**

Based on above, appellant contends that Examiner has not made out a prima facie case of obviousness over the cited references. Consequently, appellant respectfully requests that the rejection be overturned. The commissioner is hereby authorized to charge any other fees which may be required, to deposit account 03-1243 (docket number LOCREM-01).

Respectfully Submitted



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Hark C. Chan

Jan. 12, 2011